

REMARKS

In response to the objections and rejections raised by the Examiner in the January 24, 2003 Office Action, our comments follow. Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 16, 18, 20 and 48-53 are pending in this application. Claims 16, 18 and 20 have been amended; claims 7, 10-12, 17, 21, 22, 24-26 and 28-43 have been cancelled; claims 49-53 have been added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. The amendments of and additions to the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicant is entitled. Further, changes to the claims herein are not narrowing amendments. Accordingly, no estoppel as to equivalents arises from or is intended by this paper.

Support for Amendments

Support for the amended and new claims is found throughout the specification and from the original and pending claims. For example, claim 18 has been rewritten as an independent claim, reciting the isolated nucleic acid molecules of claim 48. Specific support for claim 18 can be found in the section of the specification beginning with the second full paragraph on page 10. The amendments to claims 16 and 20 relate to form, rather than substance.

Support for new claims 49-52 can be found in cancelled claims 25, 26 and 31. Support for new claim 53 can be found in cancelled claims 7, 28, 32, 36 and 40, and in Table 1a, beginning on page 21 of the specification.

No new matter is added by this amendment.

Specification

The Examiner is thanked for calling attention to the preferred layout of a patent application. It is noted that the use of the preferred layout, as well as that of section headings is

merely suggested in the Rules, and is not a requirement for allowance of an application. In particular, 37 C.F.R. §1.77 employs the term “should”, rather than “must”, with respect to the layout of an application. However, the Examiner is invited and authorized to add section headings or to amend the specification to conform to the preferred layout, by Examiner’s Amendment, if she feels that such action is necessary to place the application in condition for allowance.

Objections to the Claims

Claims 10, 11, 22, 18, 20, 21, 29-31, 33-35, 37-39 and 41-43 were objected to as being of improper dependent form because they allegedly failed the infringement test. Claims 10, 11, 21, 22, 29-31, 33-35, 37-39 and 41-43 have been cancelled by this Amendment, rendering the objection moot with respect to these claims. Claim 18 has been rewritten in independent form, obviating the objection. Claim 20 depends from claim 18 and provides a proper, further limitation. Accordingly, reconsideration and withdrawal of the objections to the claims are requested.

II. THE REJECTIONS UNDER 35 U.S.C. §112, 1ST PARAGRAPH, ARE OVERCOME

Claims 7, 10-12, 22, 24-26 and 28-43 were rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking adequate written description and enablement. These claims have been cancelled by this Amendment. It is believed that the pending claims meet the requirements of §112, first paragraph; therefore, reconsideration and withdrawal of the rejections thereunder are requested.

III. THE REJECTIONS UNDER 35 U.S.C. §112, 2ND PARAGRAPH, ARE OVERCOME

Claims 7, 10-12, 17, 18, 20-22, 24-26 and 28-43 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Claims 7, 10-12, 17, 21, 22, 24-26 and 28-43 have been cancelled by this amendment, rendering the rejection with respect to those claims moot.

Claim 18 was deemed indefinite because it was allegedly unclear as to which part of the kit of claim 48 was used in the method of claim 18. Claim 18 has been rewritten in independent form, obviating its rejection, and that of dependent claim 20. Consequently, reconsideration and withdrawal of the rejections under §112, second paragraph, are requested.

IV. THE REJECTIONS UNDER 35 U.S.C. §102 ARE OVERCOME

Claims 7, 10-12, 18, 20-22, 24-26 and 28-43 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Holmes *et al.* This rejection will be addressed with respect to claims 18 and 20 only, as all of the other included claims have been cancelled by this amendment.

The rejection of claims 18 and 20 is traversed. Holmes *et al.* relates to the use of certain oligonucleotide fragments of the *Salmonella typhimurium* LT2 chromosome to detect and identify *Salmonella* species. However, these primers do not enable the detection of all the representatives of the seven *Salmonella* subspecies. The polynucleotides taught and claimed in the current application are distinct from those referred to in Holmes, and enable more complete detection of the various *Salmonella* subspecies than those used by Holmes. Holmes simply does not teach the use of nucleic acid molecules of SEQ ID NOs: 1-10, or their complements, to detect *Salmonella* in a test sample. Therefore, Holmes does not anticipate the claims of the present application.

Claims 11, 31, 35, 39 and 43 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Goldgaber *et al.* Claims 7, 10-12, 22 and 28-35 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by DeBeenhouwer *et al.* Claims 7, 10-12, 22 and 28-35 were rejected under 35 U.S.C. §102(a) as allegedly being anticipated by Draper. The claims involved in all of these rejections have been cancelled by this amendment, rendering the rejections moot.

In view of the above arguments and amendments, reconsideration and withdrawal of all of the rejections under §102 are requested.

V. THE REJECTION UNDER 35 U.S.C. §103 IS OVERCOME

Claims 24-26 were rejected under 35 U. S. C. §103(a) as being unpatentable over DeBeenhouwer *et al.* As claims 24-26 have been cancelled, reconsideration and withdrawal of the §103 rejection are requested.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

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EXENSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

16. (Four Times Amended) The kit of[according to] claim 48, wherein the isolated nucleic acid molecules are[were] produced synthetically and in at least two separate synthesis batches.

18. (Four Times Amended) A method of detecting the presence or absence of a subspecies of bacterium *Salmonella enterica*,[bacteria] comprising the steps of:

- (a) providing at least one isolated nucleic acid molecule selected from the group consisting of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9 and SEQ ID NO: 10 and the complement of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9 and SEQ ID NO: 10;
- (b) contacting the at least one isolated nucleic acid molecule of (a) with a test sample containing nucleic acids;
- (c) hybridizing and/or amplifying the nucleic acid molecules of the test sample with the at least one isolated nucleic acid molecule of (a); and
- (d) detecting nucleic acid hybrids formed between the nucleic acid molecules of the test sample and the at least one nucleic acid molecule of (a) and/or detecting amplified nucleic acid molecules of the test sample, thereby determining the presence or absence of a subspecies of the bacterium *Salmonella enterica* in the test sample.

[(i) using a kit according to claim 48; (ii) carrying out nucleic acid hybridisation or nucleic acid amplification or nucleic acid hybridization plus amplification and detecting the presence or absence of all representatives of *Salmonella enterica* subspecies.]

20. (Thrice Amended) The method of[according to] claim 18, wherein the amplifying of the nucleic acid molecules of the test sample[said amplification] is carried out by a polymerase chain reaction (PCR).